

AMENDED IN SENATE JUNE 17, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 939

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend Sections ~~2400 and 2403~~ of 215, 2030, 2032, 2034, 2330.3, 2400, 2403, 2450, 2451, 3027, 3121, 3150, 3151, 3183, 3557, 6323, and 6340 of, and to add Section 217 to, the Family Code, and to amend Section 328 of, and to add Section 10850.6 to, the Welfare and Institutions Code, relating to ~~dissolution of marriage~~ family law proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Committee on Judiciary. ~~Dissolution of marriage.~~ Family law proceedings.

Existing law prohibits after entry of judgment in specified family law proceedings in which there was at issue the visitation, custody, or support of a child, modification of the judgment or order, and prohibits a subsequent order in the proceedings, unless notice is served upon the party, as specified.

This bill would authorize a postjudgment motion to modify a custody, visitation, or child support order to be served on the other party by first-class mail or airmail, as specified.

Existing law provides that all relevant evidence is admissible in an action before the court, including evidence relevant to the credibility of a witness or hearsay declarant, subject to specified exceptions.

This bill would require the court in a family law action to receive all live, competent, and relevant testimony at the hearing of an order to show cause or notice of motion, unless the parties stipulate otherwise or the court makes a finding of good cause to refuse to hear the testimony.

Existing law provides that a court in a dissolution of marriage proceeding may order one party to pay the other party an amount that is reasonably necessary for attorney's fees or costs in order to ensure that each party has access to legal representation. Under existing law, the court shall base this determination on the respective incomes and needs of the parties and any factors affecting the parties' respective abilities to pay.

This bill would provide that, when a request for attorney's fees and costs is made, the court shall make findings regarding whether an award of attorney's fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation. The bill would require the court to make an order awarding attorney's fees and costs if the findings demonstrate disparity in access and ability to pay. The bill would require the Judicial Counsel, by January 1, 2012, to adopt a rule of court and develop a form to implement this provision.

~~Existing law specifies procedures for dissolution of marriage. Existing~~ law provides for summary dissolution proceedings if certain conditions exist at the time the proceeding is commenced, including that there are no children, as specified, neither party has any interest in real property, as specified, and the marriage is not more than 5 years in duration at the time the petition is filed. A proceeding for summary dissolution is commenced by filing a joint petition that is signed under oath by the husband and the wife, as specified.

This bill would revise the latter condition that must be met at the time a proceeding for summary dissolution is commenced to instead require that the marriage be not more than 5 years in duration as of the date of separation of the parties.

Existing law also provides that when 6 months have expired from the date of the filing of the joint petition for summary dissolution of marriage, the court may, upon application of either party, enter judgment dissolving the marriage. At any time before the filing of the application for judgment, however, either party to the marriage may revoke the joint petition and thereby terminate the proceeding for summary dissolution.

This bill would authorize the court to enter judgment dissolving the marriage when 6 months have expired without requiring the application of either party, unless a revocation of the joint petition has been filed.

Existing law provides that in an action for dissolution of marriage, the court, upon motion, is required to hold a preliminary status conference to determine whether a case management plan will be ordered. Existing law further provides that no case management plan may be ordered absent the stipulation of the parties.

This bill would delete the requirement that the parties stipulate to the case management plan.

Existing law provides that the court may appoint private counsel to represent the interests of a child in a custody or visitation proceeding if it determines that it would be in the best interest of the child. Existing law specifies the duties of a child's counsel, and grants the counsel the discretion to present the child's wishes to the court if he or she deems it appropriate.

This bill would require the court and counsel to comply with specified requirements if the court appoints private counsel pursuant to the provision described above. The bill would also require the child's counsel to present the child's wishes to the court if the child so desires.

Under the Domestic Violence Prevention Act, the court in a protective order proceeding may issue an ex parte order granting temporary child custody and visitation to a party who has established a parent and child relationship. Existing law provides that the court may not make a finding of paternity in this proceeding.

This bill would provide that the court in a protective order proceeding may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity. The bill would provide that if the court in a protective order proceeding makes an order for custody, visitation, or support, the order may, if the court so provides, survive the termination of the protective order.

Under existing law, if allegations of child sexual abuse arise during a child custody proceeding, the court may take reasonable steps to protect the child's safety, including requesting that the local child welfare services agency conduct an investigation of the allegations. Existing law provides that a social worker shall make an investigation of allegations of child abuse or neglect and shall determine whether it is appropriate to offer child welfare services to the family. Under existing law, public social service records are confidential, except as provided.

This bill would direct a social worker to draw no inference regarding the credibility of allegations of child abuse from the mere existence of a child custody or visitation dispute. The bill would also provide an exception to the confidentiality of public social service records for participants in family law cases, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Family law touches the most central aspects of Californian's*
4 *lives, such as where, when, and how often a parent will see his or*
5 *her child, the personal safety of the parent and child, how much*
6 *child and spousal support one person will receive and the other*
7 *will pay, and how the assets that the family has accumulated will*
8 *be divided between the separating parties. These decisions can*
9 *have a dramatic and lasting impact on people's lives.*

10 *(b) Faced with crowded family law calendars and the rising*
11 *numbers of self-represented litigants, as over 70 percent of litigants*
12 *in family law are unrepresented, many courts have adopted local*
13 *rules and procedures in an attempt to more efficiently process the*
14 *high volume of family law cases. While some of these rules and*
15 *procedures have been innovative, others have created barriers to*
16 *litigants getting their day in court, particularly litigants who are*
17 *unrepresented. These barriers include drastically reducing live*
18 *testimony in family law, which the California Supreme Court found,*
19 *in its landmark decision Elkins v. Superior Court (2007) 41 Cal.4th*
20 *1337, deprives family law litigants of due process protections.*
21 *Access to justice requires that parties be able to appropriately*
22 *address the court and present their cases.*

23 *(c) Family law cases involve an extraordinary range of issues,*
24 *from the most simple, uncontested case with no children and no*
25 *property to cases involving complex legal issues, highly personal*
26 *and difficult conflicts over children, or serious issues of domestic*
27 *violence and child safety. Unlike general civil, complex civil,*
28 *juvenile, probate, and criminal cases, family law is the last general*
29 *jurisdiction in California that does not provide a procedure for*
30 *the fair, timely, and efficient disposition of a case. The courts*

1 cannot manage limited resources efficiently, nor serve the best
2 interests of California's families and children, without the ability
3 to manage the flow of cases through the courts. Under the current
4 system, the parties, who are most often self-represented, must take
5 the initiative to obtain appropriate orders and judgments in a
6 complicated judicial process that very few litigants can understand,
7 and they often fail to take the next step toward completing the case.
8 As a result, it is not unusual for family law cases to linger in the
9 court for years. By eliminating the current ability of one party to
10 drag out a case for years, the Legislature intends that all parties
11 participate in, and benefit from, family centered case resolution.

12 (d) A fundamental responsibility of judges in family law cases
13 is to protect the safety and well-being of children. Family courts
14 are confronted with allegations of child abuse or neglect and must
15 respond to these accusations appropriately. In order to help ensure
16 that allegations of child abuse, neglect, and violence are fully
17 investigated and that children are protected from harm, child
18 welfare services should be required to fully investigate all
19 allegations of this type, regardless of the existence of a family law
20 dispute involving the same parties. No inference regarding the
21 credibility of the allegations or the need for child welfare services
22 shall be drawn from the existence of a child custody or visitation
23 dispute.

24 (e) Courts appoint minor's counsel to provide representation
25 for a child and to meet the need the court may have for additional
26 information on which to base a difficult child custody decision.
27 To be responsive to the complexities inherent in the cases that
28 involve minor's counsel and the challenges attorneys, parties, and
29 children may face when these appointments are made, the role of
30 minor's counsel must be more clearly delineated and the
31 responsibilities of minor's counsel more clearly defined so that
32 there is greater transparency and clarity in order to provide the
33 best possible representation for children in these matters.

34 (f) Given the lifelong impact of family law matters, legal
35 assistance in these cases is critical. Unfortunately, over 70 percent
36 of litigants in family law cases are unrepresented by counsel. While
37 many cases involve parties who are all unrepresented, in some of
38 these cases one party can afford counsel but the other cannot.
39 These cases pose significant difficulties for the unrepresented
40 litigant, the attorney, and the judicial officer. Representation for

1 *parties can be significantly improved in some of these cases if*
2 *courts make early need-based attorney's fee awards.*

3 *SEC. 2. Section 215 of the Family Code is amended to read:*

4 *215. ~~After~~ (a) Except as provided in subdivision (b), after*
5 *entry of a judgment of dissolution of marriage, nullity of marriage,*
6 *legal separation of the parties, or paternity, or after a permanent*
7 *order in any other proceeding in which there was at issue the*
8 *visitation, custody, or support of a child, no modification of the*
9 *judgment or order, and no subsequent order in the proceedings, is*
10 *valid unless any prior notice otherwise required to be given to a*
11 *party to the proceeding is served, in the same manner as the notice*
12 *is otherwise permitted by law to be served, upon the party. For the*
13 *purposes of this section, service upon the attorney of record is not*
14 *sufficient.*

15 *(b) A postjudgment motion to modify a custody, visitation, or*
16 *child support order may be served on the other party or parties*
17 *by first-class mail or airmail, postage prepaid, to the persons to*
18 *be served. For any party served by mail, the proof of service must*
19 *include an address verification.*

20 *SEC. 3. Section 217 is added to the Family Code, to read:*

21 *217. (a) At the hearing on any order to show cause or notice*
22 *of motion brought pursuant to the this code, absent a stipulation*
23 *of the parties or a finding of good cause pursuant to subdivision*
24 *(b), the court shall receive any live, competent testimony that is*
25 *relevant and within the scope of the hearing and the court may*
26 *ask questions of the parties.*

27 *(b) In appropriate cases, a court may make a finding of good*
28 *cause to refuse to receive live testimony and shall state its reasons*
29 *for the finding on the record or in writing. The Judicial Council*
30 *shall, by January 1, 2012, adopt a statewide rule of court regarding*
31 *the factors a court shall consider in making a finding of good*
32 *cause.*

33 *(c) A party seeking to present live testimony from witnesses*
34 *other than the parties shall, prior to the hearing, file and serve a*
35 *witness list with a brief description of the anticipated testimony.*
36 *If the witness list is not served prior to the hearing, the court may,*
37 *on request, grant a brief continuance and may make appropriate*
38 *temporary orders pending the continued hearing.*

39 *SEC. 4. Section 2030 of the Family Code is amended to read:*

1 2030. (a) (1) In a proceeding for dissolution of marriage,
2 nullity of marriage, or legal separation of the parties, and in any
3 proceeding subsequent to entry of a related judgment, the court
4 shall ensure that each party has access to legal representation,
5 *including access early in the proceedings*, to preserve each party's
6 rights by ordering, if necessary based on the income and needs
7 assessments, one party, except a governmental entity, to pay to
8 the other party, or to the other party's attorney, whatever amount
9 is reasonably necessary for attorney's fees and for the cost of
10 maintaining or defending the proceeding during the pendency of
11 the proceeding.

12 ~~(2) Whether one party shall be ordered to pay attorney's fees~~
13 ~~and costs for another party, and what amount shall be paid, shall~~
14 ~~be determined based upon, (A) the respective incomes and needs~~
15 ~~of the parties, and (B) any factors affecting the parties' respective~~
16 ~~abilities to pay. When a request for attorney's fees and costs is~~
17 ~~made, the court shall make findings on whether an award of~~
18 ~~attorney's fees and costs under this section is appropriate, whether~~
19 ~~there is a disparity in access to funds to retain counsel, and~~
20 ~~whether one party is able to pay for legal representation of both~~
21 ~~parties. If the findings demonstrate disparity in access and ability~~
22 ~~to pay, the court shall make an order awarding attorney's fees~~
23 ~~and costs.~~ A party who lacks the financial ability to hire an attorney
24 may request, as an in pro per litigant, that the court order the other
25 party, if that other party has the financial ability, to pay a
26 reasonable amount to allow the unrepresented party to retain an
27 attorney in a timely manner before proceedings in the matter go
28 forward.

29 (b) Attorney's fees and costs within this section may be awarded
30 for legal services rendered or costs incurred before or after the
31 commencement of the proceeding.

32 (c) The court shall augment or modify the original award for
33 attorney's fees and costs as may be reasonably necessary for the
34 prosecution or defense of the proceeding, or any proceeding related
35 thereto, including after any appeal has been concluded.

36 (d) Any order requiring a party who is not the spouse of another
37 party to the proceeding to pay attorney's fees or costs shall be
38 limited to an amount reasonably necessary to maintain or defend
39 the action on the issues relating to that party.

1 (e) *The Judicial Council shall, by January 1, 2012, adopt a*
2 *statewide rule of court to implement this section and develop a*
3 *form for the information that shall be submitted to the court to*
4 *obtain an award of attorney's fees under this section.*

5 SEC. 5. *Section 2032 of the Family Code is amended to read:*

6 2032. (a) The court may make an award of attorney's fees and
7 costs under Section 2030 or 2031 where the making of the award,
8 and the amount of the award, are just and reasonable under the
9 relative circumstances of the respective parties.

10 (b) In determining what is just and reasonable under the relative
11 circumstances, the court shall take into consideration the need for
12 the award to enable each party, to the extent practical, to have
13 sufficient financial resources to present the party's case adequately,
14 taking into consideration, to the extent relevant, the circumstances
15 of the respective parties described in Section 4320. The fact that
16 the party requesting an award of attorney's fees and costs has
17 resources from which the party could pay the party's own
18 attorney's fees and costs is not itself a bar to an order that the other
19 party pay part or all of the fees and costs requested. Financial
20 resources are only one factor for the court to consider in
21 determining how to apportion the overall cost of the litigation
22 equitably between the parties under their relative circumstances.

23 (c) The court may order payment of an award of attorney's fees
24 and costs from any type of property, whether community or
25 separate, principal or income.

26 (d) Either party may, at any time before the hearing of the cause
27 on the merits, on noticed motion, request the court to make a
28 finding that the case involves complex or substantial issues of fact
29 or law related to property rights, visitation, custody, or support.
30 Upon that finding, the court may in its discretion ~~direct the~~
31 ~~implementation of a case management plan for the purpose of~~
32 ~~allocating~~ *determine the appropriate, equitable allocation of*
33 attorney's fees, court costs, expert fees, and consultant fees
34 equitably between the parties. ~~The case management plan shall~~
35 ~~focus on specific, designated issues. The plan~~ *court order* may
36 provide for the allocation of separate or community assets, security
37 against these assets, and for payments from income or anticipated
38 income of either party for the purpose described in this subdivision
39 and for the benefit of one or both parties. Payments shall be
40 authorized only on agreement of the parties or, in the absence

1 thereof, by court order. The court may order that a referee be
2 appointed pursuant to Section 639 of the Code of Civil Procedure
3 to oversee the ~~case management plan~~ *allocation of fees and costs*.

4 *SEC. 6. Section 2034 of the Family Code is amended to read:*

5 2034. (a) On application of either party, the court may deny
6 the family law attorney's real property lien described in Section
7 2033 based on a finding that the encumbrance would likely result
8 in an unequal division of property because it would impair the
9 encumbering party's ability to meet his or her fair share of the
10 community obligations or would otherwise be unjust under the
11 circumstances of the case. The court may also for good cause limit
12 the amount of the family law attorney's real property lien. A
13 limitation by the court is not to be construed as a determination of
14 reasonable attorney's fees.

15 (b) On receiving an objection to the establishment of a family
16 law attorney's real property lien, the court may on its own motion
17 determine whether the case involves complex or substantial issues
18 of fact or law related to property rights, visitation, custody, or
19 support. If the court finds that the case involves one or more of
20 these complex or substantial issues, the court may ~~direct the~~
21 ~~implementation of a case management plan~~ *determine the*
22 *appropriate, equitable allocation of fees and costs* as provided in
23 subdivision (d) of Section 2032.

24 (c) The court has jurisdiction to resolve any dispute arising from
25 the existence of a family law attorney's real property lien.

26 *SEC. 7. Section 2330.3 of the Family Code is amended to read:*

27 2330.3. (a) All dissolution actions, to the greatest extent
28 possible, shall be assigned to the same superior court department
29 for all purposes, in order that all decisions in a case through final
30 judgment shall be made by the same judicial officer. *However, if*
31 *the assignment will result in a significant delay of any family law*
32 *matter, the dissolution action need not be assigned to the same*
33 *superior court department for all purposes, unless the parties*
34 *stipulate otherwise.*

35 (b) The Judicial Council shall adopt a standard of judicial
36 administration prescribing a minimum length of assignment of a
37 judicial officer to a family law assignment.

38 (c) This section shall be operative on July 1, 1997.

39 ~~SECTION 1.~~

40 *SEC. 8. Section 2400 of the Family Code is amended to read:*

1 2400. (a) A marriage may be dissolved by the summary
2 dissolution procedure provided in this chapter if all of the following
3 conditions exist at the time the proceeding is commenced:

4 (1) Either party has met the jurisdictional requirements of
5 Chapter 3 (commencing with Section 2320) with regard to
6 dissolution of marriage.

7 (2) Irreconcilable differences have caused the irremediable
8 breakdown of the marriage and the marriage should be dissolved.

9 (3) There are no children of the relationship of the parties born
10 before or during the marriage or adopted by the parties during the
11 marriage, and the wife, to her knowledge, is not pregnant.

12 (4) The marriage is not more than five years in duration as of
13 the date of separation of the parties.

14 (5) Neither party has any interest in real property wherever
15 situated, with the exception of the lease of a residence occupied
16 by either party which satisfies the following requirements:

17 (A) The lease does not include an option to purchase.

18 (B) The lease terminates within one year from the date of the
19 filing of the petition.

20 (6) There are no unpaid obligations in excess of four thousand
21 dollars (\$4,000) incurred by either or both of the parties after the
22 date of their marriage, excluding the amount of any unpaid
23 obligation with respect to an automobile.

24 (7) The total fair market value of community property assets,
25 excluding all encumbrances and automobiles, including any
26 deferred compensation or retirement plan, is less than twenty-five
27 thousand dollars (\$25,000), and neither party has separate property
28 assets, excluding all encumbrances and automobiles, in excess of
29 twenty-five thousand dollars (\$25,000).

30 (8) The parties have executed an agreement setting forth the
31 division of assets and the assumption of liabilities of the
32 community, and have executed any documents, title certificates,
33 bills of sale, or other evidence of transfer necessary to effectuate
34 the agreement.

35 (9) The parties waive any rights to spousal support.

36 (10) The parties, upon entry of the judgment of dissolution of
37 marriage pursuant to Section 2403, irrevocably waive their
38 respective rights to appeal and their rights to move for a new trial.

39 (11) The parties have read and understand the summary
40 dissolution brochure provided for in Section 2406.

1 (12) The parties desire that the court dissolve the marriage.

2 (b) On January 1, 1985, and on January 1 of each odd-numbered
3 year thereafter, the amounts in paragraph (6) of subdivision (a)
4 shall be adjusted to reflect any change in the value of the dollar.
5 On January 1, 1993, and on January 1 of each odd-numbered year
6 thereafter, the amounts in paragraph (7) of subdivision (a) shall
7 be adjusted to reflect any change in the value of the dollar. The
8 adjustments shall be made by multiplying the base amounts by the
9 percentage change in the California Consumer Price Index as
10 compiled by the Department of Industrial Relations, with the result
11 rounded to the nearest thousand dollars. The Judicial Council shall
12 compute and publish the amounts.

13 ~~SEC. 2.~~

14 *SEC. 9.* Section 2403 of the Family Code is amended to read:

15 2403. When six months have expired from the date of the filing
16 of the joint petition for summary dissolution, the court shall, unless
17 a revocation has been filed pursuant to Section 2402, enter the
18 judgment dissolving the marriage. The judgment restores to the
19 parties the status of single persons, and either party may marry
20 after the entry of the judgment. The clerk shall send a notice of
21 entry of judgment to each of the parties at the party's last known
22 address.

23 *SEC. 10.* Section 2450 of the Family Code is amended to read:

24 2450. (a) The purpose of case management is to provide
25 judicial assistance and management to the parties in actions for
26 dissolution of marriage for the purpose of expediting the processing
27 of the case, reducing the expense of litigation, and focusing on
28 early resolution by settlement.

29 ~~(b) On motion of a party, or on the court's own motion, the~~
30 ~~court shall hold a preliminary status conference for the purpose of~~
31 ~~considering whether case management shall be undertaken and a~~
32 ~~case management plan ordered. However, no case management~~
33 ~~plan shall be ordered absent stipulation of the parties, and the case~~
34 ~~management plan may be terminated at any time upon stipulation~~
35 ~~of the parties or order of the court.~~

36 ~~(c) On stipulation of the parties, the court shall~~

37 (b) The court may order a case management plan as provided
38 in Section 2451.

39 *SEC. 11.* Section 2451 of the Family Code is amended to read:

1 2451. (a) A court-ordered case management plan, ~~as stipulated~~
2 ~~by the parties~~, may include all of the following:

3 ~~(a)~~

4 (1) Early neutral case evaluation.

5 ~~(b)~~

6 (2) Alternative dispute resolution.

7 ~~(c)~~

8 (3) Limitations on discovery, including temporary suspension
9 pending exploration of settlement. There is a rebuttable
10 presumption that an attorney who carries out discovery as provided
11 in a case management plan has fulfilled his or her duty of care to
12 the client as to the existence of community property.

13 ~~(d)~~

14 (4) Use of telephone conference calls to ascertain the status of
15 the case, encourage cooperation, and assist counsel in reaching
16 agreement. However, if the court is required to issue an order other
17 than by stipulation, a hearing shall be held.

18 ~~(e) Use of telephone conference calls for hearing contested~~
19 ~~motions. These conference call hearings shall be recorded by a~~
20 ~~court reporter.~~

21 ~~(f) Modification~~

22 (5) *If stipulated by the parties, modification* or waiver of the
23 requirements of procedural statutes.

24 ~~(g)~~

25 (6) The powers of the judicial officer who is managing the case
26 under the case management plan.

27 ~~(h)~~

28 (7) A requirement that any expert witness be selected by the
29 parties jointly or be appointed by the court. However, if at any
30 time the court determines that the issues for which experts are
31 required cannot be settled under these conditions, the court shall
32 permit each party to employ his or her own expert.

33 ~~(i)~~

34 (8) Bifurcation of issues for trial.

35 ~~(j) A case management plan pursuant to subdivision (d) of~~
36 ~~Section 2032 or subdivision (b) of Section 2034.~~

37 ~~(k)~~

38 (9) Any other matters.

1 **(b)** *This section does not provide any additional authority to*
2 *the court to appoint experts beyond that permitted under other*
3 *provisions of law.*

4 **SEC. 12.** *Section 3027 of the Family Code is amended to read:*

5 3027. (a) If allegations of child *abuse, including child* sexual
6 abuse, are made during a child custody proceeding and the court
7 has concerns regarding the child's safety, the court may take any
8 reasonable, temporary steps as the court, in its discretion, deems
9 appropriate under the circumstances to protect the child's safety
10 until an investigation can be completed. Nothing in this section
11 shall affect the applicability of Section 16504 or 16506 of the
12 Welfare and Institutions Code.

13 (b) If allegations of child *abuse, including child* sexual abuse,
14 are made during a child custody proceeding, the court may request
15 that the local child welfare services agency conduct an investigation
16 of the allegations pursuant to Section 328 of the Welfare and
17 Institutions Code. Upon completion of the investigation, the agency
18 shall report its findings to the court.

19 **SEC. 13.** *Section 3121 of the Family Code is amended to read:*

20 3121. (a) In any proceeding pursuant to Section 3120, and in
21 any proceeding subsequent to entry of a related judgment, the court
22 shall ensure that each party has access to legal representation,
23 *including access early in the proceedings*, to preserve each party's
24 rights by ordering, if necessary based on the income and needs
25 assessments, one party, except a government entity, to pay to the
26 other party, or to the other party's attorney, whatever amount is
27 reasonably necessary for attorney's fees and for the cost of
28 maintaining or defending the proceeding during the pendency of
29 the proceeding.

30 (b) ~~Whether one party shall be ordered to pay attorney's fees~~
31 ~~and costs for another party, and what amount shall be paid, shall~~
32 ~~be determined based upon (1) the respective incomes and needs~~
33 ~~of the parties, and (2) any factors affecting the parties' respective~~
34 ~~abilities to pay. When a request for attorney's fees and costs is~~
35 ~~made, the court shall make findings on whether an award of~~
36 ~~attorney's fees and costs under this section is appropriate, whether~~
37 ~~there is a disparity in access to funds to retain counsel, and~~
38 ~~whether one party is able to pay for legal representation of both~~
39 ~~parties. If the findings demonstrate disparity in access and ability~~
40 ~~to pay, the court shall make an order awarding attorney's fees~~

1 *and costs.* A party who lacks the financial ability to hire an attorney
2 may request, as an in pro per litigant, that the court order the other
3 party, if that other party has the financial ability, to pay a
4 reasonable amount to allow the unrepresented party to retain an
5 attorney in a timely manner before proceedings in the matter go
6 forward.

7 (c) Attorney's fees and costs within this section may be awarded
8 for legal services rendered or costs incurred before or after the
9 commencement of the proceeding.

10 (d) The court shall augment or modify the original award for
11 attorney's fees and costs as may be reasonably necessary for the
12 prosecution or defense of a proceeding described in Section 3120,
13 or any proceeding related thereto, including after any appeal has
14 been concluded.

15 (e) Except as provided in subdivision (f), an application for a
16 temporary order making, augmenting, or modifying an award of
17 attorney's fees, including a reasonable retainer to hire an attorney,
18 or costs, or both, shall be made by motion on notice or by an order
19 to show cause during the pendency of any proceeding described
20 in Section 3120.

21 (f) The court shall rule on an application for fees under this
22 section within 15 days of the hearing on the motion or order to
23 show cause. An order described in subdivision (a) may be made
24 without notice by an oral motion in open court at either of the
25 following times:

26 (1) At the time of the hearing of the cause on the merits.

27 (2) At any time before entry of judgment against a party whose
28 default has been entered pursuant to Section 585 or 586 of the
29 Code of Civil Procedure. The court shall rule on any motion made
30 pursuant to this subdivision within 15 days and prior to the entry
31 of any judgment.

32 (e) *The Judicial Council shall, by January 1, 2012, adopt a*
33 *statewide rule of court to implement this section and develop a*
34 *form for the information that shall be submitted to the court to*
35 *obtain an award of attorney's fees under this section.*

36 SEC. 14. *Section 3150 of the Family Code is amended to read:*

37 3150. (a) If the court determines that it would be in the best
38 interest of the minor child, the court may appoint private counsel
39 to represent the interests of the child in a custody or visitation
40 proceeding, *provided that the court and counsel comply with the*

1 *requirements set forth in Rules 5.240, 5.241, and 5.242 of the*
2 *California Rules of Court.*

3 (b) Upon entering an appearance on behalf of a child pursuant
4 to this chapter, counsel shall continue to represent that child unless
5 relieved by the court upon the substitution of other counsel by the
6 court or for cause.

7 *SEC. 15. Section 3151 of the Family Code is amended to read:*

8 3151. (a) The child's counsel appointed under this chapter is
9 charged with the representation of the child's best interests. The
10 role of the child's counsel is to gather facts that bear on the best
11 interests of the child, and present those facts that admissible
12 evidence to the court, ~~including the child's wishes when counsel~~
13 ~~deems it appropriate for consideration by the court pursuant to~~
14 ~~Section 3042 in any manner appropriate for the counsel of a party.~~
15 *If the child so desires, the child's counsel shall present the child's*
16 *wishes to the court.* The counsel's duties, unless under the
17 circumstances it is inappropriate to exercise the duty, include
18 interviewing the child, reviewing the court files and all accessible
19 relevant records available to both parties, and making any further
20 investigations as the counsel considers necessary to ascertain facts
21 relevant to the custody or visitation hearings.

22 (b) ~~At the court's request, counsel shall prepare a written~~
23 ~~statement of issues and contentions setting forth the facts that bear~~
24 ~~on the best interests of the child. The statement shall set forth a~~
25 ~~summary of information received by counsel, a list of the sources~~
26 ~~of information, the results of the counsel's investigation, and such~~
27 ~~other matters as the court may direct. The statement of issues and~~
28 ~~contentions shall not contain any communication subject to Section~~
29 ~~954 of the Evidence Code. The statement of issues and contentions~~
30 ~~shall be filed with the court and submitted to the parties or their~~
31 ~~attorneys of record at least 10 days before the hearing, unless the~~
32 ~~court orders otherwise. At the court's request, counsel may orally~~
33 ~~state the wishes of the child if that information is not a privileged~~
34 ~~communication subject to Section 954 of the Evidence Code, for~~
35 ~~consideration by the court pursuant to Section 3042. Counsel shall~~
36 *serve notices and pleadings on all parties, consistent with*
37 *requirements for parties.* Counsel shall not be called as a witness
38 in the proceeding. Counsel may introduce and examine counsel's
39 own witnesses, present arguments to the court concerning the
40 child's welfare, and participate further in the proceeding to the

1 degree necessary to represent the child adequately. ~~In consultation~~
2 ~~with representatives of the Family Law Section of the State Bar~~
3 ~~and the Senate and Assembly Judiciary Committees, the Judicial~~
4 ~~Council may specify standards for the preparation of the statement~~
5 ~~of issues and contentions and may promulgate a model statement~~
6 ~~of issues and contentions, which shall include simple instructions~~
7 ~~regarding how to subpoena a witness, and a blank subpoena form.~~

8 (c) The child's counsel shall have the following rights:

9 (1) Reasonable access to the child.

10 (2) Standing to seek affirmative relief on behalf of the child.

11 (3) Notice of any proceeding, and all phases of that proceeding,
12 including a request for examination affecting the child.

13 (4) The right to take any action that is available to a party to the
14 proceeding, including, but not limited to, the following: filing
15 pleadings, making evidentiary objections, and presenting evidence
16 and being heard in the proceeding, which may include, but shall
17 not be limited to, presenting motions and orders to show cause,
18 and participating in settlement conferences, trials, seeking writs,
19 appeals, and arbitrations.

20 (5) Access to the child's medical, dental, mental health, and
21 other health care records, school and educational records, and the
22 right to interview school personnel, caretakers, health care
23 providers, mental health professionals, and others who have
24 assessed the child or provided care to the child. The release of this
25 information to counsel shall not constitute a waiver of the
26 confidentiality of the reports, files, and any disclosed
27 communications. Counsel may interview mediators; however, the
28 provisions of Sections 3177 and 3182 shall apply.

29 (6) The right to reasonable advance notice of and the right to
30 refuse any physical or psychological examination or evaluation,
31 for purposes of the proceeding, which has not been ordered by the
32 court.

33 (7) The right to assert or waive any privilege on behalf of the
34 child.

35 (8) The right to seek independent psychological or physical
36 examination or evaluation of the child for purposes of the pending
37 proceeding, upon approval by the court.

38 *SEC. 16. Section 3183 of the Family Code is amended to read:*

39 3183. (a) Except as provided in Section 3188, the mediator
40 may, consistent with local court rules, submit a recommendation

1 to the court as to the custody of or visitation with the child, *if the*
2 *mediator has first provided the parties and their attorneys,*
3 *including counsel for any minor children, with the*
4 *recommendations in writing in advance of the hearing.*

5 (b) ~~Where~~ If the parties have not reached agreement as a result
6 of the mediation proceedings, the mediator may recommend to the
7 court that an investigation be conducted pursuant to Chapter 6
8 (commencing with Section 3110) or that other services be offered
9 to assist the parties to effect a resolution of the controversy before
10 a hearing on the issues.

11 (c) In appropriate cases, the mediator may recommend that
12 restraining orders be issued, pending determination of the
13 controversy, to protect the well-being of the child involved in the
14 controversy.

15 *SEC. 17. Section 3557 of the Family Code is amended to read:*

16 3557. (a) Notwithstanding any other provision of law, absent
17 good cause to the contrary, the court, ~~upon (1) determining an~~
18 ~~ability to pay and (2) consideration of the respective incomes and~~
19 ~~needs of the parties in order to ensure that each party has access~~
20 ~~to legal representation to preserve all of the party's rights in order~~
21 ~~to ensure that each party has access to legal representation to~~
22 ~~preserve each part's rights, upon determining (1) an award of~~
23 ~~attorney's fees and cost under this section is appropriate, (2) there~~
24 ~~is a disparity in access to funds to retain counsel, and (3) one party~~
25 ~~is able to pay for legal representation for both parties,~~ shall award
26 reasonable attorney's fees to any of the following persons:

27 (1) A custodial parent or other person to whom payments should
28 be made in any action to enforce any of the following:

29 (A) An existing order for child support.

30 (B) A penalty incurred pursuant to Chapter 5 (commencing with
31 Section 4720) of Part 5 of Division 9.

32 (2) A supported spouse in an action to enforce an existing order
33 for spousal support.

34 (b) This section shall not be construed to allow an award of
35 attorney's fees to or against a governmental entity.

36 *SEC. 18. Section 6323 of the Family Code is amended to read:*

37 6323. (a) Subject to Section 3064:

38 (1) The court may issue an ex parte order determining the
39 temporary custody and visitation of a minor child on the conditions
40 the court determines to a party who has established a parent and

1 child relationship pursuant to paragraph (2). The parties shall
2 inform the court if any custody or visitation orders have already
3 been issued in any other proceeding.

4 (2) (A) In making a determination of the best interests of the
5 child and in order to limit the child's exposure to potential domestic
6 violence and to ensure the safety of all family members, if the
7 party who has obtained the restraining order has established a
8 parent and child relationship and the other party has not established
9 that relationship, the court may award temporary sole legal and
10 physical custody to the party to whom the restraining order was
11 issued and may make an order of no visitation to the other party
12 pending the establishment of a parent and child relationship
13 between the child and the other party.

14 (B) A party may establish a parent and child relationship for
15 purposes of subparagraph (A) only by offering proof of any of the
16 following:

17 (i) The party gave birth to the child.

18 (ii) The child is conclusively presumed to be a child of the
19 marriage between the parties, pursuant to Section 7540, or the
20 party has been determined by a court to be a parent of the child,
21 pursuant to Section 7541.

22 (iii) Legal adoption or pending legal adoption of the child by
23 the party.

24 (iv) The party has signed a valid voluntary declaration of
25 paternity, which has been in effect more than 60 days prior to the
26 issuance of the restraining order, and that declaration has not been
27 rescinded or set aside.

28 (v) A determination made by the juvenile court that there is a
29 parent and child relationship between the party offering the proof
30 and the child.

31 (vi) A determination of paternity made in a proceeding to
32 determine custody or visitation in a case brought by the district
33 attorney pursuant to Section 11350.1 of the Welfare and Institutions
34 Code.

35 (vii) The party has been determined to be the parent of the child
36 through a proceeding under the Uniform Parentage Act (Part 3
37 commencing with Section 7600) of Division 12).

38 (viii) Both parties stipulate, in writing or on the record, for
39 purposes of this proceeding, that they are the parents of the child.

1 (b) ~~The~~(1) *Except as provided in paragraph (2), the court shall*
2 *not make a finding of paternity in this proceeding, and any order*
3 *issued pursuant to this section shall be without prejudice in any*
4 *other action brought to establish a parent and child relationship.*

5 (2) *The court may accept a stipulation of paternity by the parties*
6 *and, if paternity is uncontested, enter a judgment establishing*
7 *paternity.*

8 (c) When making any order for custody or visitation pursuant
9 to this section, the court's order shall specify the time, day, place,
10 and manner of transfer of the child for custody or visitation to limit
11 the child's exposure to potential domestic conflict or violence and
12 to ensure the safety of all family members. Where the court finds
13 a party is staying in a place designated as a shelter for victims of
14 domestic violence or other confidential location, the court's order
15 for time, day, place, and manner of transfer of the child for custody
16 or visitation shall be designed to prevent disclosure of the location
17 of the shelter or other confidential location.

18 (d) When making an order for custody or visitation pursuant to
19 this section, the court shall consider whether the best interest of
20 the child, based upon the circumstances of the case, requires that
21 any visitation or custody arrangement shall be limited to situations
22 in which a third person, specified by the court, is present, or
23 whether visitation or custody shall be suspended or denied.

24 SEC. 19. *Section 6340 of the Family Code is amended to read:*

25 6340. (a) The court may issue any of the orders described in
26 Article 1 (commencing with Section 6320) after notice and a
27 hearing. When determining whether to make any orders under this
28 subdivision, the court shall consider whether failure to make any
29 of these orders may jeopardize the safety of the petitioner and the
30 children for whom the custody or visitation orders are sought. *If*
31 *the court makes any order for custody, visitation, or support, that*
32 *order may, if the court so provides, survive the termination of any*
33 *protective order.* The Judicial Council shall provide notice of this
34 provision on any Judicial Council forms related to this subdivision.

35 (b) The court may issue an order described in Section 6321
36 excluding a person from a dwelling if the court finds that physical
37 or emotional harm would otherwise result to the other party, to a
38 person under the care, custody, and control of the other party, or
39 to a minor child of the parties or of the other party.

1 *SEC. 20. Section 328 of the Welfare and Institutions Code is*
2 *amended to read:*

3 328. Whenever the social worker has cause to believe that there
4 was or is within the county, or residing therein, a person described
5 in Section 300, the social worker shall immediately make any
6 investigation he or she deems necessary to determine whether child
7 welfare services should be offered to the family and whether
8 proceedings in the juvenile court should be commenced. If the
9 social worker determines that it is appropriate to offer child welfare
10 services to the family, the social worker shall make a referral to
11 these services pursuant to Chapter 5 (commencing with Section
12 16500) of Part 4 of Division 9. *No inference regarding the*
13 *credibility of the allegations or the need for child welfare services*
14 *shall be drawn from the mere existence of a child custody or*
15 *visitation dispute.*

16 However, this section does not require an investigation by the
17 social worker with respect to a child delivered or referred to any
18 agency pursuant to Section 307.5.

19 The social worker shall interview any child four years of age or
20 older who is a subject of an investigation, and who is in juvenile
21 hall or other custodial facility, or has been removed to a foster
22 home, to ascertain the child's view of the home environment. If
23 proceedings are commenced, the social worker shall include the
24 substance of the interview in any written report submitted at an
25 adjudicatory hearing, or if no report is then received in evidence,
26 the social worker shall include the substance of the interview in
27 the social study required by Section 358. *A referral based on*
28 *allegations of child abuse from the family court pursuant to Section*
29 *3027 of the Family Code shall be investigated to the same extent*
30 *as any other child abuse allegation.*

31 *SEC. 21. Section 10850.6 is added to the Welfare and*
32 *Institutions Code, to read:*

33 10850.6. (a) *Notwithstanding Section 10850, child welfare*
34 *services files or records relating to a minor who is the subject of*
35 *a family law case with issues concerning custody or visitation may*
36 *be inspected by the following persons, if actively participating in*
37 *the family law case:*

38 (1) *The judge, commissioner, or other hearing officer assigned*
39 *to the family law case.*

40 (2) *The parent or guardian of the minor.*

1 (3) *An attorney for a party to the family law case.*

2 (4) *A family court mediator assigned to a case involving the*
3 *minor pursuant to Article 1 (commencing with Section 3160) of*
4 *Chapter 11 of Part 2 of Division 8 of the Family Code.*

5 (5) *A court-appointed evaluator or a person conducting a*
6 *court-connected child custody evaluation, investigation, or*
7 *assessment pursuant to Section 3111 or 3118 of the Family Code.*

8 (6) *Counsel appointed for the minor in the family law case*
9 *pursuant to Section 3150 of the Family Code. Prior to allowing*
10 *counsel appointed for the minor in the family law case to inspect*
11 *the file, the court clerk may require counsel to provide a certified*
12 *copy of the court order appointing him or her as the counsel for*
13 *the minor.*

14 (b) *Any information obtained pursuant to this section shall be*
15 *maintained solely in the confidential portion of the family law file.*